

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

KATHY MADALON, et al, Plaintiffs

v.

No. 2:98CV194-EMB

HWCC-TUNICA, INC., Defendant

OPINION

This matter is presently before the court on Defendant's Motion for Summary Judgment on the ground that there are no genuine issues of material fact, and that plaintiff has failed to prove an essential element of her case upon which she bears the burden of proof at trial. Plaintiffs have not responded to the motion.

The parties in the above entitled action have consented to trial and entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. §636(c), with any appeal to the Court of Appeals for the Fifth Circuit.

This is a simple slip and fall case. Plaintiffs were playing the slot machines at the Hollywood Casino at Tunica, Mississippi, on August 17, 1996, when Kathy Madalon fell. In their complaint, plaintiffs allege that the defendant's employees had placed plastic buckets in the aisle between the slot machines and Mrs. Madalon tripped over one (Complaint, ¶5).

However, immediately after the incident Mr. Madalon told security officer, Christi Cantrell Morgan, that his wife fell off a stool (Morgan Affidavit). This description of the accident is further supported by the Guest/Injury Mishap Report completed by Ms. Morgan at the time of the incident (Kathy Depo., Exhibit 1). Ms. Morgan also attested that she was at the scene where Mrs. Madalon fell shortly after the incident and saw no buckets anywhere (Morgan Affidavit). The records of Mrs. Madalon's visit at the emergency room at Eastwood Hospital later that day indicate that she complained of "falling out," and that the "events that precipitated event are unclear." (Kathy Depo., Exhibit 2).

In their answers to Interrogatory No. 16, plaintiffs admitted that neither of them knew who placed buckets on the floor, when they were placed there, or how they were placed on the floor. In her deposition, Mrs. Madalon testified that she saw no buckets either before or after she fell, but she concluded that she had tripped over one because her husband told her there were buckets "all over the place" where she fell (Kathy Depo., at 35). However, in his deposition her husband testified that Mrs. Madalon was the one who mentioned the buckets to him (Larry Depo., at 24). Both plaintiffs testified that they could not say if casino employees placed the buckets on the floor or when they were placed there (Kathy Depo., at 30; Larry Depo., at 29).

Summary judgment should be entered only if "... there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." Rule 56(c), Federal Rules of Civil Procedure. The party seeking summary judgment has the initial burden of demonstrating through the evidentiary materials that there is no actual dispute as to any material fact in the case. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). On motion for summary judgment, "[t]he inquiry performed is the threshold inquiry of determining whether there is a need for a trial -- whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). In determining whether this burden has been met, the court should view the evidence introduced and all factual inferences from that evidence in the light most favorable to the party opposing the motion. Id. "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex Corp. v. Catrett, supra, at 322.

The summary judgment procedure does not authorize trial by affidavit. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or

for a directed verdict." Anderson v. Liberty Lobby, Inc., *supra*, at 255. Accordingly, a court may not decide any factual issues found in the record on motion for summary judgment, but if such material issues are present, the court must deny the motion and proceed to trial. Impossible Elec. Tech. v. Wackenhut Protection Systems, 669 F.2d 1026, 1031 (5 Cir. 1982); Environmental Defense Fund v. Marsh, 651 F.2d 983, 991 (5 Cir. 1981); Lighting Fixture & Electric Supply Co. v. Continental Ins. Co., 420 F.2d 1211, 1213 (5 Cir. 1969).

Under the provisions of Rule 56(e), Federal Rules of Civil Procedure, a party against whom a motion for summary judgment is made may not merely rest upon his pleadings, but must, by affidavit, or other materials as provided in Rule 56, inform the court of specific facts showing that there is a genuine issue for trial. Celotex Corp. v. Catrett, *supra*, at 324. The facts stated in uncontradicted affidavits or other evidentiary materials must be accepted as true. However, the moving party must still show that he is entitled to judgment on those facts as a matter of law, and if he fails to discharge that burden he is not entitled to judgment, notwithstanding the apparent absence of a factual issue. 6-Pt. 2, Moore, Federal Practice (2d Ed.), ¶56.22[2], p. 56-777.

As set forth *supra*, defendant has provided the court with discovery responses, deposition testimony, medical records, affidavits, and other evidentiary materials which support its contention that plain-tiffs cannot prove that Mrs. Madalon's injury was the result of actions or inactions by defendant's employees. Plaintiffs have offered no evidence to the contrary, and therefore these materials must be taken as true.

The elements necessary to support a claim of premises liability in a slip and fall case under Mississippi law are: "the proprietor had actual knowledge of a dangerous condition, or the dangerous condition existed for a sufficient amount of time to establish constructive knowledge, in that the proprietor should have known of the condition, or the dangerous condition was created through a negligent act of a store's proprietor or his employees." Lindsey v Sears Roebuck and Co., 846 F.Supp.501 (SD Miss. 1993), *aff'd* 16 F.3d 616 (5 Cir. 1993), *citing* Munford, Inc. v. Fleming, 597 So.2d 1282, 1284 (Miss. 1992).

Plaintiffs have come forward with no evidence that the casino had actual or constructive knowledge that buckets were in the aisle, or that any employee of the casino placed the buckets there. Neither have they refuted the evidence supplied by the defendant that there were no buckets there at all, hence no dangerous condition to the plaintiffs or any other patron.

In the court's opinion the defendant has met its burden, and is therefore entitled to judgment as a matter of law. Defendant's Motion for Summary Judgment will be granted, and this matter dismissed.

A separate order in accordance with this opinion shall issue this same date.

THIS, the 19th day of November, 1999.

UNITED STATES MAGISTRATE JUDGE

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HWCC-TUNICA, INC., Defendant

FINAL JUDGMENT

In accordance with an opinion entered this day, the parties in the above entitled action having consented to trial and entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. §636(c), with any appeal to the Court of Appeals for the Fifth Circuit,

Defendant's Motion for Summary Judgment is hereby sustained, and all of plaintiffs' claims against HWCC-Tunica, Inc. are hereby dismissed with prejudice.

All memoranda, depositions, affidavits and other matters considered by the court in ruling on the motion for summary judgment are hereby incorporated and made a part of the record in this cause.

SO ORDERED, this, the 19th day of November, 1999.

UNITED STATES MAGISTRATE JUDGE